

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION**

RAMONA WINEBARGER and REX WINEBARGER,  
Plaintiffs,

**CASE NOS. 5:15CV57-RLV;  
3:15CV211-RLV**

v.  
BOSTON SCIENTIFIC CORPORATION,  
Defendant

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MARTHA CARLSON,  
Plaintiff,

v.  
BOSTON SCIENTIFIC CORPORATION  
Defendants

**PLAINTIFFS OBJECTIONS AND COUNTER DESIGNATIONS TO DEFENDANT  
BOSTON SCIENTIFIC'S DEPOSITION DESIGNATIONS OF TODD MCCASLIN  
TAKEN ON JANUARY 30, 2014**

<b>BSC Designations</b>	<b>Objection</b>	<b>Plaintiffs Counter Designation</b>
tm013014, (Pages 82:18 to 83:3) 82 18 Q. Did anyone at Phillips ever tell you that they 19 did not want to provide additional Phillips Sumika 20 Marlex resin to Boston Scientific because it was unsafe? 21 A. No. Neither the sales rep nor Bob Rhoades 22 communicated that to Boston Scientific or to me. 23 Q. In particular, did they ever advise you that 24 Phillips Sumika Marlex resin was unsafe for use in 83 1 medical applications involving permanent implants in the 2 human body? 3 A. No, they never stated that.		<i>[Counter Designation to BSC 82:18-83:3] tm013014, (Page 29:16 to 29:19) 29 16 Q. Were you involved in working with raw 17 materials, obtaining raw materials related to the 18 production of transvaginal mesh products? 19 A. Not between 2007 and a point in time in 2011. tm013014, (Page 31:22 to 31:24) 31 22 Q. Did you have any involvement with Boston 23 Scientific, with Marlex resin, prior to 2011? 24 A. No, none.</i>

		<p><i>tm013014, (Page 40:5 to 40:10)</i> 40</p> <p>5    <i>Q. Mr. McCaslin, have</i>  you had a chance to review  6    <i>the e-mail chain that we</i>  marked as Exhibit 320?  7    <i>A. Yes, I have.</i>  8    <i>Q. On page 7 of the</i>  exhibit, do you notice an  9    <i>e-mail from yourself to</i>  Michael Darmiento?  10   <i>A. Yes, I do.</i></p> <p><i>tm013014, (Pages 41:21 to</i>  43:19)  41</p> <p>21   <i>Q. The purpose of your e-</i>  mail was to summarize  22   <i>what you had discussed</i>  with him. True?  23   <i>A. Yes, it seems like it.</i>  24   <i>Q. In your e-mail you</i>  state, "We purchased a  42</p> <p>1    polypropylene resin from  Phillips Sumika back in 2005 as  2    a last-time buy." True?  3    <i>A. That is what the</i>  document says, yes.  4    <i>Q. What is a last-time</i>  buy?  5    <i>A. In general terms or</i>  specific to Phillips  6    Sumika?  7    <i>Q. Specific to Phillips</i>  Sumika.  8    <i>A. In this case, Phillips</i>  Sumika was discontinuing  9    commercial operations of  this polypropylene and offered  10   Boston Scientific the ability  to buy almost as much as  11   we needed that would,  quote, last us a lifetime,  12   "lifetime" meaning lifetime  of the product. So that is  13   a last-time buy.  14   <i>Q. All right. So Boston</i>  Scientific, as far as you</p>
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		<p>15 knew, purchased a lifetime supply of resin back in 2005.</p> <p>16 A. That was our assumption at that point in time,</p> <p>17 yes.</p> <p>18 Q. Now, can you read the next sentence after that?</p> <p>19 A. "We bought 4,000 pounds that were supposed to</p> <p>20 last approximately 15 years. It did not."</p> <p>21 Q. I'm sorry.</p> <p>22 A. That one?</p> <p>23 Q. No. The one -- "You indicated we purchased a</p> <p>24 polypropylene resin from Phillips." The next sentence</p> <p style="text-align: center;">43</p> <p>1 after that.</p> <p>2 A. Oh, the next sentence. "They are not too</p> <p>3 excited about supplying to the medical industry."</p> <p>4 Q. And you say "they," you're referring to</p> <p>5 Phillips. Correct?</p> <p>6 A. Phillips. Correct.</p> <p>7 Q. So in July -- on July 29th of 2011, you knew</p> <p>8 that Phillips was not excited about supplying their</p> <p>9 resin to the medical industry. Correct?</p> <p>10 A. Yes.</p> <p>11 Q. And Boston Scientific was the medical industry.</p> <p>12 Correct?</p> <p>13 A. Part of that, yes.</p> <p>14 Q. How did you learn that information?</p> <p>15 A. I'm trying to recall if I know exactly the</p> <p>16 method that I learned that information. But Phillips</p> <p>17 possibly through my -- one of my commodity managers. I</p> <p>18 can't really give you a specific answer. I don't</p> <p>19 recall. It was a long time ago.</p>
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		<p><i>tm013014, (Pages 45:4 to 46:11)</i></p> <p style="text-align: center;">45</p> <p>4 <i>Phillips never sold any resin to Boston</i></p> <p>5 <i>Scientific after 2005. Is that true?</i></p> <p>6 A. <i>I don't know that to be true, to be honest with</i></p> <p>7 <i>you. I never checked. They did not sell any more</i></p> <p>8 <i>Marlex HGX resin to it, that I know. But other grades,</i></p> <p>9 <i>I am not aware of that.</i></p> <p>10 Q. <i>You go on in the e-mail to indicate that "We</i></p> <p>11 <i>bought 4,000 pounds that was supposed to last 15 years</i></p> <p>12 <i>and it did not." Correct?</i></p> <p>13 A. <i>Correct.</i></p> <p>14 Q. <i>And then is there a typo here? "We run our."</i></p> <p>15 <i>It should say "We run out"?</i></p> <p>16 A. <i>Yes.</i></p> <p>17 Q. <i>"In 12 months." Right?</i></p> <p>18 A. <i>Yeah.</i></p> <p>19 Q. <i>So this indicates that you were expecting to</i></p> <p>20 <i>run out of their resin in about 12 months from July</i></p> <p>21 <i>of 2011?</i></p> <p>22 A. <i>Yes.</i></p> <p>23 Q. <i>And then you indicate supports a \$1 million</i></p> <p>24 <i>business. Right?</i></p> <p style="text-align: center;">46</p> <p>1 A. <i>No. \$100 million business.</i></p> <p>2 Q. <i>I'm sorry. \$100 million business.</i></p> <p>3 <i>And that was annual?</i></p> <p>4 A. <i>Yes, that was my understanding.</i></p> <p>5 Q. <i>Can you read the next paragraph?</i></p> <p>6 A. <i>"The resin brand grade is"?</i></p> <p>7 Q. <i>Yes.</i></p>
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		<p>8 A. "Marlex polypropylene HGX-030-01. Phillips 9 discontinued the grade several years ago. We are 10 searching all over the world for some left-over 11 inventory."</p> <p>tm013014, (Page 48:7 to 48:12) 48</p> <p>7 Q. And you felt pressure to find that Marlex resin 8 as soon as possible. Correct? 9 A. Yes.</p> <p>10 Q. And that's why you were searching all over the 11 world? 12 A. Yes.</p> <p>tm013014, (Pages 48:24 to 49:6) 48</p> <p>24 Q. It looks like you figured out that the general 49 1 manager from Phillips was a guy named Bob Rhoades. 2 MR. HEGARTY: What page are you on? 3 MR. BROWN: Still at the bottom of page 8. 4 A. Yes, that is correct. 5 Q. Did you reach out to Mr. Rhoades? 6 A. Yes, I did</p> <p>tm013014, (Page 51:7 to 51:14) 51</p> <p>7 Q. On page 4 of 9 there's the e-mail from 8 Mr. Rhoades to yourself on August 2nd of 2011. Correct? 9 A. Rhoades to me. Correct. 10 Q. Can you read his e- mail? 11 A. It says, "Todd. PSPC is not interested in 12 mending our 2004</p>
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		<p>agreement concerning sales of  13 HGX-030-01. This  decision was made and agreed  upon back  14 in 2004 and our position  has not changed."</p> <p>tm013014, (Pages 51:22 to  52:6)</p> <p>51</p> <p>22 Q. On page 3 of 9, you  sent a followup e-mail to  23 Mr. Rhoades. Correct?  24 A. Correct.</p> <p>52</p> <p>1 Q. And in short, you  reached out to him to see if  2 he'd be willing to discuss  the issue further. Correct?  3 A. Correct.</p> <p>4 Q. Because you needed  to get that resin as soon as  5 possible. True?  6 A. I needed to get that  resin. Yes, sir</p> <p>tm013014, (Pages 52:19 to  53:2)</p> <p>52</p> <p>19 Q. And then Mr. Rhoades  responded on page 2 of 9  20 with an e-mail later that  same day. Correct?  21 A. Yes.</p> <p>22 Q. And Mr. Rhoades  wrote, "Thanks, Todd. We are  23 simply not interested in this  business at any price,  24 which is still the basis for  our past agreement with  53  1 your company." Correct?  2 A. That is what the  document says, yes.</p> <p>tm013014, (Pages 53:21 to  54:9)</p> <p>tm013014, (Page 59:2 to 59:9)</p> <p>59</p> <p>2 Q. All right. Sir, I'm going</p>
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		<p>to show you what  3 we've marked as Exhibit  942. It's a one-page document.  4 Do you recognize this  to be an e-mail from  5 yourself to several  individuals, dated August 5,  2011?  6 A. I do.  7 Q. And was basically --  the subject was an  8 update regarding  polypropylene resin risk. True?  9 A. That is the subject.  Yes.</p> <p>tm013014, (Page 60:12 to  60:14)</p> <p>60  12 Q. Okay. So there's  basically six bullet points.  13 Correct?  14 A. Correct.</p> <p>tm013014, (Pages 62:21 to  64:17)</p> <p>62  21 Q. So then let's go to the  fifth. It says "China  22 sourcing." Correct?  23 A. Yes.  24 Q. Let's talk about that.  You indicate that there</p> <p>63  1 were -- two options had  been identified with  2 distributors in China.  Right?  3 A. That's what the  document says, yes.  4 Q. Who is Michael  Zhao?  5 A. Michael Zhao is a  Boston Scientific employee,  6 works for the CRM, or  pacemaker division. And he  was  7 located in Shanghai, China.  He's part of the sourcing  8 organization.  9 Q. And can you read</p>
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		<p>what you have under</p> <p>10 Distributor Number 1.</p> <p>11 A. "Distributor Number</p> <p>12 1: (High risk - no C of</p> <p>13 C) one 55-pound bag</p> <p>available and 4,000 pounds" left</p> <p>14 behind -- excuse me --</p> <p>"behind that."</p> <p>15 Q. All right. Let's talk</p> <p>about that.</p> <p>16 What does "high risk"</p> <p>mean?</p> <p>17 A. That was Michael's</p> <p>categorization. He didn't</p> <p>18 feel that they were a</p> <p>distributor that we necessarily</p> <p>19 wanted to work with</p> <p>because they were either small,</p> <p>20 difficult to deal with -- I</p> <p>don't know all of the</p> <p>21 reasons why Michael</p> <p>called that high risk.</p> <p>22 Q. What is a C of C?</p> <p>23 A. Certificate of</p> <p>conformance or compliance,</p> <p>also</p> <p>24 known as C of A.</p> <p>25 Q. What is that?</p> <p>64</p> <p>1 A. Certificate of</p> <p>assurance.</p> <p>2 Q. And what is that?</p> <p>3 A. Are you saying what</p> <p>is the certificate?</p> <p>4 Generally what does it</p> <p>comprise of? It's generally a</p> <p>5 document that comes from</p> <p>the supplier to their receiver</p> <p>6 when something is sent.</p> <p>Most suppliers send us C of C</p> <p>7 or C of A that says, yes, this</p> <p>is stainless steel and</p> <p>8 we're sending it to you or</p> <p>something like that.</p> <p>9 Q. The purpose of the</p> <p>document is to give you --</p> <p>10 give Boston Scientific the</p> <p>assurance that the product is</p> <p>11 actually an authentic</p> <p>product?</p> <p>12 A. In addition to not --</p>
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		<p>making the process more  13 efficient and not having  Boston Scientific have the  14 requirements to fully test a  product. We do that all  15 the time. We have -- a  document comes in to prove  16 something has been tested  and we can accept it based on  17 that documentation.</p> <p>tm013014, (Page 69:2 to 69:7)  69</p> <p>2 Q. Sir, you've had a chance  to review Exhibit 943?</p> <p>3 A. Yes.</p> <p>4 Q. Does it appear to be  a true and accurate copy  5 of an e-mail chain you were  involved in from  6 August 15th, 2011, through  August 17, 2011?</p> <p>7 A. It does.</p> <p>tm013014, (Page 69:18 to  69:23)  69</p> <p>18 Q. Tell us what's going on  with this e-mail.</p> <p>19 MR. HEGARTY:  Objection.</p> <p>20 A. He's updating the  team on his dealings with  21 Option 1 distributor.</p> <p>22 Q. And he indicates,  "He is trying to find CoA but  23 has not been successful so  far." True?</p> <p>tm013014, (Page 70:11 to  70:23)  70</p> <p>11 Q. On page 8 did you  respond to his e-mail?</p> <p>12 A. Yes, I did.</p> <p>13 Q. On August 15 of  2011?</p> <p>14 A. Yes.</p> <p>15 Q. And you told him to  lock in all 4,000 pounds  16 right away. Correct?</p>
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		<p>17 A. Correct.</p> <p>18 Q. Because you wanted to obtain that resin as soon as possible. True?</p> <p>19 as possible. True?</p> <p>20 A. We wanted the option to retain that, yes.</p> <p>21 Q. And you also told him, "We need to work on getting the C of A." Right?</p> <p>22 getting the C of A." Right?</p> <p>23 A. That is correct.</p> <p>tm013014, (Pages 71:9 to 72:6)</p> <p>71</p> <p>9 Q. On page 7 of 9, there's an e-mail from Mr. Zhao on August 15 at 10:14 a.m. True?</p> <p>10 on August 15 at 10:14 a.m. True?</p> <p>11 A. Which one here? I'm sorry.</p> <p>12 Q. On page 7 of 9.</p> <p>13 A. Yes. From me or Mike?</p> <p>14 Q. From Mike to you. Right?</p> <p>15 A. Yes.</p> <p>16 Q. Halfway down this e-mail he indicates, "This material has changed hands multiple times, and this 2 tons is just a small portion of the whole lot."</p> <p>17 material has changed hands multiple times, and this</p> <p>18 2 tons is just a small portion of the whole lot."</p> <p>19 Right?</p> <p>20 A. Correct.</p> <p>21 Q. And he told you that he was pushing them to get the CoA. Correct?</p> <p>22 the CoA. Correct?</p> <p>23 A. Correct.</p> <p>24 Q. On page 6 of 9, at the bottom there's another</p> <p>72</p> <p>1 e-mail from Mr. Zhao on August 16. Right?</p> <p>2 A. Yes.</p> <p>3 Q. And he indicates that they can get another</p> <p>4 15 tons if you need it. And he goes on to say that they</p> <p>5 cannot locate the CoA for the lot. Right?</p> <p>6 A. That's what it says, yes.</p>
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		<p><i>tm013014, (Page 73:12 to 73:14)</i></p> <p style="text-align: center;"><i>73</i></p> <p><i>12 Boston Scientific did receive the resin from China.</i></p> <p><i>13 True?</i></p> <p><i>14 A. Yes.</i></p>
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# **1. Counter Exhibits**

- a. McCaslin Exhibit 320
- b. McCaslin Exhibit 942
- c. McCaslin Exhibit 943

DATED: June 26, 2015

Respectfully Submitted,

## **TRACEY & FOX LAW FIRM**

/s/ Sean Tracey

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 26, 2015, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

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